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March 5, 2019

Hon. Jed S. Rakoff
Daniel P. Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. Andy Gyamfi
16 Cr. 521 (CM)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-7-19

Dear Judge Rakoff:

Per the Court's instructions, Karloff Commissionong and I submit this letter to request a revision to the draft of the jury instructions that the Court circulated yesterday.

Instruction Number 17 should be amended to include language tracking Count Three of the indictment. Specifically, the jury must be instructed that Count Three pertains to the allegation that a coconspirator "brandished a firearm and fired that weapon at a victim of the attempted robbery *other than Carlos Vargas*."

Instructions Number 17 and 19 relate to Counts Three and Four of the indictment, which respectively are violations of 18 U.S.C. §§ 924(c) and (j). Mr. Gyamfi has no specific request with respect to the jury instructions on this issue, but respectfully asks the Court to note his objection to attempted Hobbs Act robbery, as a matter of law, qualifying as a predicate "crime of violence" under § 924(c)(3)(A). This objection is submitted while acknowledging that the controlling law in the Second Circuit is that Hobbs Act robbery categorically constitutes a predicate crime of violence for a § 924(j) conviction because it has as an element the use, attempted use, or threatened use of physical force against the person or property of another. *United States v. Hill*, 890 F.3d 51, 60 (2d Cir. 2018). After the amended opinion in Hill was issued on May 9, 2018, Hill's applications for rehearing and rehearing en banc were denied by the United States Court of Appeals, Second Circuit. Hill currently has a petition for writ of

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certiorari pending before the United States Supreme Court. Mr. Gyamfi joins in all the arguments therein, including that United States Court of Appeals, Second Circuit, was wrong on the merits of this issue.

Sincerely,

/s/

Donald J. Yannella, Esq.
Karloff Commissionong, Esq.